

6-22-2016

## State v. Barthel Respondent's Brief Dckt. 43817

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/not\\_reported](https://digitalcommons.law.uidaho.edu/not_reported)

---

### Recommended Citation

"State v. Barthel Respondent's Brief Dckt. 43817" (2016). *Not Reported*. 3010.  
[https://digitalcommons.law.uidaho.edu/not\\_reported/3010](https://digitalcommons.law.uidaho.edu/not_reported/3010)

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

LAWRENCE G. WASDEN  
Attorney General  
State of Idaho  
P.O. Box 83720  
Boise, Idaho 83720-0010  
(208) 334-4534

PAUL R. PANTHER  
Deputy Attorney General  
Chief, Criminal Law Division

LORI A. FLEMING  
Deputy Attorney General

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 43817
Plaintiff-Respondent,	)	
	)	Ada County Case No.
v.	)	CR-2015-7626
	)	
JOHNATHON P. BARTHEL,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Barthel failed to establish that the district court abused its discretion, either by imposing consecutive sentences of 10 years indeterminate, and 10 years, with four years fixed, upon his guilty pleas to two counts of sexual exploitation of a child, or by denying his Rule 35 motion for reduction of sentence?

Barthel Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Barthel pled guilty to two counts of sexual exploitation of a child (by possession of sexually exploitative material) and the district court imposed a unified sentence of 10 years, with four years fixed, for the first count, and a consecutive 10-year indeterminate

sentence for the second count. (R., pp.52-56.) Barthel filed a notice of appeal timely from the judgment of conviction. (R., pp.60-62.) He also filed a timely Rule 35 motion for reduction of sentence, which the district court denied. (Motion and Memorandum in Support of Reduction of Sentence; Order Denying Motion for Reconsideration of Sentence (Augmentations).)

Barthel asserts his sentences are excessive in light of his depression, acceptance of responsibility, and willingness to participate in treatment. (Appellant's brief, pp.3-6.) The record supports the sentences imposed.

The length of a sentence is reviewed under an abuse of discretion standard considering the defendant's entire sentence. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007) (citing State v. Strand, 137 Idaho 457, 460, 50 P.3d 472, 475 (2002); State v. Huffman, 144 Idaho 201, 159 P.3d 838 (2007)). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. Id. (citing State v. Trevino, 132 Idaho 888, 980 P.2d 552 (1999)). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)). To carry this burden the appellant must show that the sentence is excessive under any reasonable view of the facts. Baker, 136 Idaho at 577, 38 P.3d at 615. A sentence is reasonable, however, if it appears necessary to achieve the primary objective of protecting society or any of the related sentencing goals of deterrence, rehabilitation or retribution. Id.

The maximum prison sentence for sexual exploitation of a child (by possession of sexually exploitative material) is 10 years. I.C. §§ 18-1507(2)(a), -1507(3). The district

court imposed a unified sentence of 10 years, with four years fixed, for the first count of sexual exploitation of a child, and a consecutive 10-year indeterminate sentence for the second count of sexual exploitation of a child, both of which fall well within the statutory guidelines. (R., pp.52-56.) At sentencing, the state addressed the heinous and deliberate nature of the offense, Barthel's long history of viewing child pornography and engaging in other sexually deviant behavior, his high risk to sexually reoffend, his ongoing criminal offending and refusal to comply with the terms of community supervision, and the danger he presents to society. (12/9/15 Tr., p.11, L.22 – p.20, L.20 (Appendix A).) The district court subsequently articulated the correct legal standards applicable to its decision and also set forth its reasons for imposing Barthel's sentences. (12/9/15 Tr., p.30, L.21 – p.35, L.4 (Appendix B).) The state submits that Barthel has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpts of the sentencing hearing transcript, which the state adopts as its argument on appeal. (Appendices A and B.)

Barthel next asserts that the district court abused its discretion by denying his Rule 35 motion for reduction of sentence in light of his desire to begin sex offender treatment sooner and his participation in programs while incarcerated. (Appellant's brief, pp.6-7.) If a sentence is within applicable statutory limits, a motion for reduction of sentence under Rule 35 is a plea for leniency, and this court reviews the denial of the motion for an abuse of discretion. State v. Huffman, 144 Idaho, 201, 203, 159 P.3d 838, 840 (2007). To prevail on appeal, Barthel must "show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion." Id. Barthel has failed to satisfy his burden.

In support of his Rule 35 motion, Barthel reiterated that wished to begin programming immediately and that he would not be able to begin sex offender treatment until closer to his release date. (Motion and Memorandum in Support of Reduction of Sentence (Augmentation).) This was not new information, as Barthel made the same argument at the sentencing hearing. (12/9/15 Tr., p.27, L.1 – p.28, L.25; p.30, Ls.11-14.) That Barthel was “stay[ing] out of trouble” and participating in classes while incarcerated is likewise not new information that entitled him to reduction of his sentences, as acceptable conduct and participation in rehabilitative programs is what is expected of inmates while they are incarcerated in the penitentiary. (Appellant’s brief, pp.6-7; Motion and Memorandum in Support of Reduction of Sentence (Augmentation).) The state submits that by failing to establish his sentences were excessive as imposed, Barthel has also failed to establish that the district court abused its discretion by denying his Rule 35 motion for reduction of sentence.

Conclusion

The state respectfully requests this Court to affirm Barthel's convictions and sentences and the district court's order denying Barthel's Rule 35 motion for reduction of sentence.

DATED this 22nd day of June, 2016.

\_\_\_\_\_  
/s/ Lori A. Fleming  
LORI A. FLEMING  
Deputy Attorney General

VICTORIA RUTLEDGE  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 22nd day of June, 2016, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

ELIZABETH ANN ALLRED  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: [briefs@sapd.state.id.us](mailto:briefs@sapd.state.id.us).

\_\_\_\_\_  
/s/ Lori A. Fleming  
LORI A. FLEMING  
Deputy Attorney General

## APPENDIX A

<p>8</p> <p>1 MS. SLAVEN: No, Your Honor.</p> <p>2 THE COURT: All right. I'm going scratch</p> <p>3 out the words "en route" and "to" and just insert</p> <p>4 "leaving".</p> <p>5 MR. LOSCHI: Page 25, there's a correction,</p> <p>6 Judge. Second to the last paragraph, end of fourth</p> <p>7 sentence up. It says: "When arrested in July 15th,</p> <p>8 Barthel was in possession of marijuana and a pipe."</p> <p>9 He was arrested in April 2015. He was</p> <p>10 initially just charged with probation violation, went out</p> <p>11 to Bannock County.</p> <p>12 THE COURT: Hold on a minute. I might be</p> <p>13 looking at the wrong paragraph.</p> <p>14 MR. LOSCHI: Page 25, last full paragraph.</p> <p>15 Begins: "Substance abuse history."</p> <p>16 THE COURT: Yeah.</p> <p>17 MR. LOSCHI: And the end of the third</p> <p>18 sentence.</p> <p>19 THE COURT: I'm with you.</p> <p>20 MR. LOSCHI: Yeah. It should be: "When</p> <p>21 arrested in April." So he was arrested in April initially</p> <p>22 on a probation violation and then a month or two after</p> <p>23 that, they charged this case and brought him out to Ada</p> <p>24 County, I think, in July. So he was actually arrested in</p> <p>25 April 2015.</p> <p>CHRISTINE ANNE OLESEK Idaho SRL-1044</p>	<p>9</p> <p>1 THE COURT: Okay.</p> <p>2 MR. LOSCHI: Those are the only corrections</p> <p>3 that we have, Your Honor.</p> <p>4 THE COURT: All right. Now, the State has</p> <p>5 had full and fair opportunity to review the PSI and</p> <p>6 attachments?</p> <p>7 MS. SLAVEN: It has, Your Honor.</p> <p>8 THE COURT: Any objections or corrections</p> <p>9 you want to bring to the court's attention?</p> <p>10 MS. SLAVEN: No. Thank you.</p> <p>11 THE COURT: Does either party think there's</p> <p>12 any additional investigation or evaluations needed before</p> <p>13 we proceed?</p> <p>14 MS. SLAVEN: No, Your Honor.</p> <p>15 MR. LOSCHI: No, Your Honor.</p> <p>16 THE COURT: Does either party intend to</p> <p>17 present any evidence or testimony in these proceedings</p> <p>18 today.</p> <p>19 MS. SLAVEN: No, Your Honor. Just argument.</p> <p>20 MR. LOSCHI: Argument only, Your Honor.</p> <p>21 THE COURT: If there's just argument, I'll</p> <p>22 hear first from the State. Ms. Slaven.</p> <p>23 MS. SLAVEN: Thank you, Your Honor. As a</p> <p>24 couple of preliminary matters. Per the plea agreement, we</p> <p>25 are submitting to the court an order to forfeit the</p> <p>CHRISTINE ANNE OLESEK Idaho SRL-1044</p>
<p>10</p> <p>1 electronic equipment seized in this case. I've provided a</p> <p>2 copy to counsel.</p> <p>3 I am also submitting to the court a proposed</p> <p>4 no contact order that prohibits the defendant from having</p> <p>5 any contact with all minor children under 18. This is</p> <p>6 currently marked as a no exceptions, no contact order. I</p> <p>7 believe that a no contact order to this effect is</p> <p>8 currently in place right now, but we're asking that the</p> <p>9 court incorporate this as part of its sentence and change</p> <p>10 the expiration date.</p> <p>11 THE COURT: All right. Mr. Loschi, do you</p> <p>12 have any objections to the court signing these orders?</p> <p>13 MR. LOSCHI: Judge, we're going to ask for a</p> <p>14 slight amendment to the no contact order for a younger</p> <p>15 sister. He has a 14-year old sister and if the court was</p> <p>16 comfortable maybe just identifying her by name and</p> <p>17 allowing phone and written contact he'd like to be able to</p> <p>18 continue to speak with her.</p> <p>19 THE COURT: Ms. Slaven, your thoughts on</p> <p>20 that?</p> <p>21 MS. SLAVEN: Your Honor, I'm okay with phone</p> <p>22 and written contact if they're not requesting in person</p> <p>23 contact, which I would have an objection to, but I'm okay</p> <p>24 with phone and written contact.</p> <p>25 MR. LOSCHI: Her name is Nicole Barthel,</p> <p>CHRISTINE ANNE OLESEK Idaho SRL-1044</p>	<p>11</p> <p>1 Your Honor.</p> <p>2 THE COURT: There was about three or four</p> <p>3 Nicoles as I read through the PSI here and --</p> <p>4 MR. LOSCHI: N-I-C-O-L-E.</p> <p>5 THE COURT: The PSI says N-I-C-H-O-L-E.</p> <p>6 MR. LOSCHI: He says there's no "H", Your</p> <p>7 Honor.</p> <p>8 THE COURT: N-I-C-O-L-E?</p> <p>9 MR. LOSCHI: Correct.</p> <p>10 THE COURT: All right. And I believe the</p> <p>11 State is asking for this to last the duration of the</p> <p>12 sentence, is that right?</p> <p>13 MS. SLAVEN: That is right, Your Honor.</p> <p>14 THE COURT: I'm not going to put a date on</p> <p>15 that yet. I want to hear all the arguments first. I will</p> <p>16 sign it. Then no objection -- you have seen the</p> <p>17 forfeiture order?</p> <p>18 MR. LOSCHI: I have, and I have no objection</p> <p>19 to that.</p> <p>20 THE COURT: I'll sign that too then.</p> <p>21 All right. Ms. Slaven, you may continue.</p> <p>22 MS. SLAVEN: Thank you, Your Honor. Per the</p> <p>23 plea agreement, we are recommending on Count One</p> <p>24 five years fixed and five years indeterminate for a total</p> <p>25 of ten. On Count Two, zero years fixed, ten years</p> <p>CHRISTINE ANNE OLESEK Idaho SRL-1044</p>



<p style="text-align: right;">12</p> <p>1 indeterminant to run consecutively to Count One for a  2 total unified sentence of a five plus 15 for 20. And  3 we're asking that the court impose that sentence in this  4 case.</p> <p>5 We do feel that a lengthy prison sentence is  6 appropriate in this case for several reasons. First and  7 foremost, It became very clear to the State when reading  8 these materials that this defendant does pose a very  9 serious risk to the community. This investigation did  10 begin with the defendant chatting with a woman on a dating  11 website called "Plenty of Fish". And it is important to  12 note that this did not begin as an undercover sting  13 operation. This was an actual woman that he was chatting  14 with, who was listed in the police report, and it's very  15 clear from the nature of those chat conversations that  16 this defendant very quickly and very deliberately steered  17 the conversation to talk about the fact that she had  18 children. To talk about her children and then blatantly  19 offers to pay her to do something sexual with one of her  20 children.</p> <p>21 And it's at this point in time when she  22 receives that communication that she contacts law  23 enforcement and law enforcement takes over her account and  24 then begins chatting and acting as this woman.</p> <p>25 During the conversations, after law  CHRISTINE ANNE OLESEK  Idaho SRL-1044</p>	<p style="text-align: right;">13</p> <p>1 enforcement takes over, he very specifically expresses his  2 desire to have sexual intercourse with what he believes is  3 her seven-year old daughter. The content of those  4 conversations is, quite frankly, very graphic, disturbing  5 and extremely difficult for me to read and understand why  6 this defendant would say these sort of things to this  7 person about having sex with a seven-year old child. The  8 defendant is first requesting to take nude pictures of the  9 child in exchange for money, and then he offers to pay  10 even more money if he can have sex with the child.</p> <p>11 At one point he indicates to the woman that  12 she should just tell the child that they're going to  13 essentially play doctor and that she should tell the child  14 that he is just going to take pictures of her to show to  15 other doctors to make sure she's healthy.</p> <p>16 He discusses the size of his penis and how  17 he is going to be gentle with the child when he has sex  18 with her. Talks about needing to find a secluded area to  19 take the child to have sex with her. And he even  20 specifically requests that the child be put in, quote,  21 cute panties. Those are the words that he uses when it's  22 finally arranged for him to meet up with the child.</p> <p>23 He also -- when he does show up to this  24 prearranged location, does have a teddy bear with him in  25 the car and that was also discussed during the  CHRISTINE ANNE OLESEK  Idaho SRL-1044</p>
<p style="text-align: right;">14</p> <p>1 conversation that he would bring her a teddy bear to make  2 her feel more comfortable.</p> <p>3 So it's very clear to the State that he's  4 engaging in a sexual conversations with the intent to have  5 sexual contact with this child. And not only does he  6 engage in those conversations, but he actually does show  7 up to the prearranged location. And as he maintains in  8 the materials, he had, quote, changed his mind about  9 having sexual contact with the child and maintains that he  10 was leaving the area; deciding not to follow through with  11 it.</p> <p>12 But I am very concerned as it does appear  13 that his intentions were clear during those conversations.  14 He took substantial steps to follow through by going to  15 the meeting location and then bringing with him the item  16 that he said he was going to bring with him at the time  17 and place arranged to do so. That's very concerning to  18 the State.</p> <p>19 Fortunately, he did not get the opportunity  20 to meet with an actual victim that night, but I am very  21 concerned about his contact or his conduct and what he, in  22 his own words, refers to as his urges. And I'm very  23 concerned that had we not had this law enforcement  24 intervention, that we may be sitting here on a different  25 charge of lewd conduct with a minor because I do think  CHRISTINE ANNE OLESEK  Idaho SRL-1044</p>	<p style="text-align: right;">15</p> <p>1 that he poses a significant risk to children in our  2 community.</p> <p>3 Then, Your Honor, you take that into account  4 and then after his arrest, his computer equipment was  5 seized and he's found to be in possession of quite a  6 number of images and videos of child pornography. These  7 images include children as young as age four being  8 subjected to horrific acts of sexual abuse by adults. One  9 of those mentioned includes the anal penetration of a  10 child, who I think was four years old.</p> <p>11 It appears from his own admissions that he's  12 been viewing child pornography for several years. So  13 we're not talking about a new development or an isolated  14 incident. This is something that's been going on for a  15 significant period of time. There are search terms on his  16 computer that are consistent with him actively seeking out  17 and looking specifically for these types of images and  18 videos.</p> <p>19 And all of this to the State, Your Honor,  20 indicates that this is a person who is sexually attracted  21 to children and is willing to act on that attraction  22 either by downloading child pornography or actually by  23 seeking out a live child victim.</p> <p>24 Therefore, the risk to the community is  25 significant. This is also shown by his long history of  CHRISTINE ANNE OLESEK  Idaho SRL-1044</p>

<p style="text-align: right;">16</p> <p>1 what I would classify as sexually deviant behaviors. We  2 learned quite a bit in the psychosexual evaluation of the  3 PSI materials. He admits that he began having sexual  4 fantasies about his older sister starting when he was  5 about 12 years old, and that he did later engage in a  6 sexual relationship with his sister to include actual  7 intercourse.</p> <p>8 At one point in time when he was a juvenile,  9 his stepmother found pornography and a pair of her  10 underwear and laundry in his bedroom. Again, that was  11 when he was a juvenile.</p> <p>12 He struggled substantially as a juvenile in  13 school and the materials indicate that he was suspended at  14 one point for sexual harassment.</p> <p>15 He admits in the psychosexual evaluation to  16 being attracted to females as young as eight years old and  17 Dr. Johnstun specifically diagnoses the defendant with  18 pedophilic disorder and other specified paraphilic  19 disorder. He also diagnoses the defendant with a  20 full-fledged antisocial personality disorder, which is  21 very concerning to the State as it relates to his  22 increased risk.</p> <p>23 Dr. Johnstun also concludes that he has  24 marijuana use disorder and persistent depressive disorder;  25 again contributing to the conclusion that he is a high  CHRISTINE ANNE OLESEK  Idaho SRL-1044</p>	<p style="text-align: right;">17</p> <p>1 risk to re-offend as compared to other sex offenders.  2 So from the State's standpoint, the  3 defendant's sexual issues are deeply rooted and this risk  4 classification by Dr. Johnstun certainly seems to support  5 the State's argument that a significant prison sentence is  6 warranted in this case to protect the community and to  7 allow the defendant to get sex offender treatment in a  8 structured environment, which is what is recommended by  9 Dr. Johnstun.</p> <p>10 The State's argument is also supported by  11 the defendant's significant criminal history. His history  12 of violating probation and his overall history of failing  13 to comply with rules and conforming his behavior to what  14 is required of him. This starts, again, back to when he  15 was a juvenile. He was constantly in trouble in school;  16 suspended multiple times. He had several run-ins with the  17 law as a juvenile. He violated his juvenile probation in  18 a number of ways. He ended up in several different  19 out-of-home placements that he was forced to leave because  20 of behavioral issues. Some of them violent in nature.  21 He ultimately ended up at the Wyoming Boys  22 School, and it appears that he did seem to do better in  23 that program and was ultimately discharged. But it is  24 clear from his juvenile history, that he has a history of  25 not following the rules and doing what is required of him.  CHRISTINE ANNE OLESEK  Idaho SRL-1044</p>
<p style="text-align: right;">18</p> <p>1 He also has a fairly significant misdemeanor  2 record as an adult that includes also again several  3 probation violations.</p> <p>4 And then, of course, concerning to the State  5 is that he was on felony probation for a burglary out of  6 Bannock County at the time that he was picked up on these  7 criminal charges that bring him in front of the court  8 today. In that burglary case he was at first given the  9 benefit of a withheld judgment and put on, I think, it was  10 four years of probation. He ultimately violated that  11 probation and lost the benefit of the withheld judgment,  12 was sentenced to a three plus four and was sent on a  13 period of retained jurisdiction.</p> <p>14 After he successfully completed that  15 program, he was placed back on probation and then again is  16 now facing another probation violation in that case as it  17 relates to these charges. The fact that he had marijuana  18 in possession -- in his possession at the time that he was  19 arrested and I think there are -- it mentioned there are  20 some other violations that are going along with that.</p> <p>21 It appears to the State that he is very  22 criminally minded. During this investigation law  23 enforcement did find a document on his thumb drive  24 entitled "Mi Vida Loco", which details a series of  25 burglaries that were committed in the Pocatello area.  CHRISTINE ANNE OLESEK  Idaho SRL-1044</p>	<p style="text-align: right;">19</p> <p>1 That is again concerning to me given that he is on  2 probation for a burglary conviction out of the Pocatello  3 area.</p> <p>4 Again, it's very clear from my standpoint  5 that this defendant cannot be trusted to follow the rules  6 and regulations of any probation, and he's absolutely not  7 a good candidate for probation.</p> <p>8 I also don't believe that he is a good  9 candidate for a period of retained jurisdiction. He  10 already had the benefit of serving a period of retained  11 jurisdiction in this burglary case and that did little to  12 deter him or stop him from picking up even more  13 substantial and serious criminal charges.</p> <p>14 His LSI score places him in the high risk  15 category. The psychosexual evaluation indicates that he's  16 a high risk to re-offend. This is an extremely serious  17 series of sex offenses that he's picked up here. We did  18 dismiss Count Three per the plea agreement, but again I'm  19 concerned by that conduct. And for all of those reasons,  20 Your Honor, the State feels that prison is the appropriate  21 option in this case to deter him and also, number one, to  22 protect the community; specifically children in our  23 community.</p> <p>24 The last thing I will say -- and the court  25 probably gets sick of me saying this because I say it in  CHRISTINE ANNE OLESEK  Idaho SRL-1044</p>

<p style="text-align: right;">20</p> <p>1 every case like this -- but there's a punishment aspect to  2 a case like this and I never want anyone to forget that  3 when we talk about child pornography, the children in  4 those images and videos are real children and although we  5 don't have them in the courtroom to give victim impact  6 statements, they are inevitably suffering from the sexual  7 abuse that they suffered. And this defendant by  8 downloading these images and videos, using them for his  9 own sexual pleasure, masturbating to them, he's done is  10 part to further exploit those children and to support the  11 child pornography industry.</p> <p>12 So for that reason alone, I think prison is  13 appropriate just from the punishment standpoint given the  14 serious nature of the offense.</p> <p>15 I understand we're asking for a significant  16 fixed period, five years, but for all those reasons, I  17 think that it is fair and appropriate and I do think there  18 needs to be a significant tail in this case so that he  19 will be supervised if he's out in the community, if he  20 ends up out on parole.</p> <p>21 Thank you, Your Honor.</p> <p>22 THE COURT: Thank you, Ms. Slaven.</p> <p>23 Mr. Loschi.</p> <p>24 MR. LOSCHI: Judge, Johnathon, after this  25 case is done, is going to go to Bannock County because  CHRISTINE ANNE OLESEK  Idaho SRL-1044</p>	<p style="text-align: right;">21</p> <p>1 he's got hold on his probation violation there, and the  2 underlying sentence in that case is a three plus four. He  3 thinks cumulatively he's probably got about a year's worth  4 of credit on that case. So he has about two years fixed  5 time left.</p> <p>6 He's actually been in custody at this point  7 since April, but what happened is they originally arrested  8 him on a probation violation, sent him to Bannock and were  9 holding him there when this charge was filed. I think the  10 judge in Bannock wanted this to precede before he did  11 anything.</p> <p>12 So he had him sent back to Ada County to  13 handle this. And so, you know, here we sit. Johnathon is  14 not an Ada County resident as the court is aware. He was  15 here on a -- essentially a work permit from his probation  16 officer when he got arrested on this.</p> <p>17 When he was arrested, he talked quite a bit  18 to law enforcement about having had a conversation with  19 himself when he got to Ada County about being a better  20 person and about making better choices. And admitted that  21 he had participated in the conversation with both this  22 Nicole and then the undercover officer, and -- but told  23 them that he had essentially abandoned his plan at the  24 last minute. Was actually driving away from the meet site  25 when he got pulled over.  CHRISTINE ANNE OLESEK  Idaho SRL-1044</p>
<p style="text-align: right;">22</p> <p>1 And, you know, the reason that I point that  2 out is because when you read his psychosexual evaluation,  3 I think that relative to a lot of other sex offenders,  4 he's got some insight into where he's at, how he wound up  5 here that others may not possess. And he describes  6 basically classically kind of climbing the ladder where he  7 started out viewing pornography and since became  8 interested in finding more taboo subjects and then we get  9 to the point where he's making overtures to actually act  10 out on the things that essentially that he's sending --  11 seeing in the pictures. And he describes appropriately in  12 the psychosexual evaluation as an addiction and he  13 realizes that he's got this addiction and that's why he's  14 here.</p> <p>15 In the psychosexual evaluation, you know, I  16 knew when I talked to him about -- prior to his pleading  17 -- about the psychosexual evaluation, what they would be  18 looking at, their findings and the significance of those,  19 you know, I told him that it was my almost 100 percent  20 opinion that he was going to come back as high risk  21 because, number one, it's a child porn case. But, number  22 two, it's a -- it involves another alleged sex crime, the  23 attempted lewd conduct, and I can't imagine how anybody --  24 any evaluator would not view him at this point as high  25 risk. But what was important is that -- and it's  CHRISTINE ANNE OLESEK  Idaho SRL-1044</p>	<p style="text-align: right;">23</p> <p>1 counterintuitive for a lot of people, I think, when they  2 do the psychosexual evaluation to be 100 percent truthful.  3 I think a lot of them want to hold back because they don't  4 want to do a bad psychosexual.</p> <p>5 In fact, what worries me more in a  6 psychosexual and I think what hurts more is when you do  7 have findings that the person was being defensive or  8 proclaiming their virtues when those didn't exist. And  9 they say in a number of places in his psychosexual MMPI II  10 that he was truthful. There appear to be no attempts to  11 portray himself well. The PPI - R; that he did not  12 attempt to portray himself as overly virtuous or either  13 overly deviant. That he was as straight forward and, I  14 think, as honest as possible in doing this psychosexual,  15 which I think is a first step. He's got a long road to  16 get through treatment and to get to a place where he can  17 deal with these issues and figure out exactly what's going  18 on.</p> <p>19 They did say that if he didn't have a lot --  20 he didn't -- what's the phrase? MSI - II doesn't quite  21 understand what's led to his deviancy. And so, you know,  22 he's certainly got work to do. Counseling and treatment  23 to try to get beyond this.</p> <p>24 But if you look back on his life history,  25 you can see certainly some indications of how he wound up  CHRISTINE ANNE OLESEK  Idaho SRL-1044</p>

## APPENDIX B

<p style="text-align: right;">28</p> <p>1 prison sentence. The idea being that again that cues him 2 up to get into treatment sooner than later.</p> <p>3 I know there's a punishment aspect to this, 4 but I'm not sure -- you know, I guess I'm speaking more 5 anecdotally rather than having a hard time behind this 6 that it would be effective to take someone with these 7 issues that needs a sex offender treatment, have -- 8 administer a psychosexual evaluation to them, get them to 9 a point here where they then, you know, probably for the 10 first time some introspective with respect to what's going 11 on with him, and give him this further sentence that's 12 going to stick a number of years -- three -- four years of 13 just sitting around between this point actually getting 14 into the treatment.</p> <p>15 So it seems like an interruption to me that 16 would almost be untherapeutic (sic).</p> <p>17 So we'd ask you to consider a rider for 18 evaluative purposes knowing and he knows that we wouldn't 19 come back in here after that and say: Hey, judge, put you 20 on probation. But would ask the court to possibly to 21 reconsider whatever the composition of the entire sentence 22 is. But if the court thinks it's not appropriate and it's 23 a prison case, we'd ask you to consider a two plus eight. 24 I think a two fixed would, like I said, put him into the 25 queue to get into programming sooner.</p> <p>CHRISTINE ANNE OLESEK Idaho SRL-1044</p>	<p style="text-align: right;">29</p> <p>1 But he's starting all over in his life right 2 now. He has a very tenuous distant connections with his 3 family. A sister of his that's 14 years old is someone 4 that he probably is the closest to his. Parents are -- 5 they're there, but they're not. I don't think parents any 6 more. He lost basically all of his possessions when he 7 got arrested here. He's got some things in a storage 8 unit.</p> <p>9 I asked him in theory if he were to -- if 10 the doors to the jail were to swing open tomorrow and you 11 got out, where you would go? He would go to the mission. 12 He would start over, again, from rock bottom. That's 13 where he's at.</p> <p>14 But this is, you know, basically the first 15 step towards getting back on his feet. That he had to 16 take -- with the psychosexual evaluation, I think, he was 17 open and honest with them as he could be. He has as much 18 insight as he probably can possess at this particular 19 point. And I would ask you to consider those sentencing 20 options for him.</p> <p>21 THE COURT: All right. Thank you, 22 Mr. Loschi.</p> <p>23 Mr. Barthel, you do have the right to 24 address the court before sentencing. You don't have to if 25 you don't want to, and I won't hold it against you if</p> <p>CHRISTINE ANNE OLESEK Idaho SRL-1044</p>
<p style="text-align: right;">30</p> <p>1 don't want to, but if there is anything you do want to 2 say, now would be the time to do that. I'd be happy to 3 hear anything you have to say.</p> <p>4 THE DEFENDANT: I just would like it to be 5 known that I take full responsibility for my actions. I 6 definitely don't blame anybody but myself for the poor 7 choices that I've made. I understand this is certainly 8 not a victimless crime and by people like me viewing this 9 kind of material, that creates a demand and creates more 10 victims in turn.</p> <p>11 I'd just like the opportunity to get into 12 treatment as soon as possible. I'd like to be able to 13 address my issues and get the help that I need as soon as 14 I can. Thank you, sir.</p> <p>15 THE COURT: All right. Thank you, 16 Mr. Barthel.</p> <p>17 All right. Mr. Loschi, is there any legal 18 cause why we should not proceed with sentencing at this 19 time?</p> <p>20 MR. LOSCHI: No, Your Honor.</p> <p>21 THE COURT: All right. Then, Mr. Barthel, 22 upon your plea of guilty to Counts One and Two of the 23 information, the court does find you guilty on both counts 24 of the charge of sexual exploitation of a child. The 25 court will, pursuant to the plea bargained agreement,</p> <p>CHRISTINE ANNE OLESEK Idaho SRL-1044</p>	<p style="text-align: right;">31</p> <p>1 dismiss Count Three, the attempted lewd and lascivious 2 conduct with a minor child.</p> <p>3 Mr. Barthel, it becomes my duty at this time 4 to exercise my best judgment and appropriate discretion 5 required by this office. You should know that that's 6 bounded and informed by the laws enacted by our 7 legislature and the case law decided by the courts, which 8 lays out the purposes and objectives of criminal 9 sentencing. First and foremost, to protect society. 10 Second of all, to deter crime generally. To 11 send a message in a sentence that affects others to deter 12 crime.</p> <p>13 Thirdly, to defer you from committing future 14 and further crimes.</p> <p>15 And, fourth, and finally, to provide 16 rehabilitative opportunities when and where available and 17 appropriate.</p> <p>18 It's axiomatic but the court tries to 19 fashion a sentence that fits both the crime and the 20 criminal.</p> <p>21 In doing that, sir, I've considered the 22 facts and circumstances of the crimes charged and 23 uncharged, the prior criminal record and material in the 24 PSI and the PSE, the aggravating and mitigating factors 25 and the arguments of counsel and your own words.</p> <p>CHRISTINE ANNE OLESEK Idaho SRL-1044</p>

<p style="text-align: right;">32</p> <p>1 I do note as a positive and mitigating</p> <p>2 factor that the defendant did accept responsibility and</p> <p>3 acknowledges his role in this and that he does have a</p> <p>4 positive attitude and is amenable to sex offender</p> <p>5 treatment.</p> <p>6 In terms of aggravating factors, I note,</p> <p>7 first of all, that this is the defendant's second felony</p> <p>8 and he committed this crime while on probation. If this</p> <p>9 had been a true event, then it is -- it seems to me likely</p> <p>10 that the defendant would have gone through with this. I</p> <p>11 didn't completely buy the story that you changed your mind</p> <p>12 and turned around. As I read the police report, they</p> <p>13 followed you essentially from the hotel to the scene where</p> <p>14 you parked for a while. Then you kind of drove around the</p> <p>15 school a time or so, and the officer indicated that he</p> <p>16 thought it was pretty obvious that you knew that you were</p> <p>17 being followed. You kind of went into a neighborhood and</p> <p>18 came out and then headed down towards Pine and Linder and</p> <p>19 that indicated to me that you didn't simply change your</p> <p>20 mind or chicken out. It seemed to me that you realized</p> <p>21 you were under surveillance and that you were leaving as</p> <p>22 much as anything because you anticipated that you were</p> <p>23 being under surveillance and being followed.</p> <p>24 Having said that, you did admit and</p> <p>25 cooperate and I did read that letter of apology, which I</p> <p>CHRISTINE ANNE OLESEK</p> <p>Idaho SRL-1044</p>	<p style="text-align: right;">33</p> <p>1 recognized in your mind at that time you still thought</p> <p>2 that you were dealing with this real mother, [REDACTED], of</p> <p>3 this real daughter, [REDACTED], and your letter so indicates</p> <p>4 that.</p> <p>5 Nevertheless, the facts and circumstances</p> <p>6 certainly justify the findings of both in the PSI and in</p> <p>7 the PSI that you seem to be high risk. Part of that, of</p> <p>8 course, relates to the fact that you'd previously violated</p> <p>9 probation and -- well, I don't know about parole, but you</p> <p>10 previously had many probation violations.</p> <p>11 I noted it wasn't mentioned during arguments</p> <p>12 today, but I noted in the PSI that between 2008 and 2014</p> <p>13 you had your driver's license suspended 19 times. With</p> <p>14 those kind of factors, it was no surprise that</p> <p>15 Dr. Johnston in the psychosexual said that you were less</p> <p>16 likely to comply with community supervision than others.</p> <p>17 And therein, I think, kind of lies my</p> <p>18 problem. I mean, fundamentally you violated your burglary</p> <p>19 probation. You went on the CAPP Rider and I did read</p> <p>20 those portions where you basically said that the CAPP was</p> <p>21 good and you were able to stop drinking and you were</p> <p>22 hoping to get a similar kind of a rider as it relates to</p> <p>23 this sexual issue; the child pornography and the attempted</p> <p>24 L and L.</p> <p>25 But I also did read through the process. I</p> <p>CHRISTINE ANNE OLESEK</p> <p>Idaho SRL-1044</p>
<p style="text-align: right;">34</p> <p>1 noted the things that previously were mentioned in the</p> <p>2 arguments, including the incestual relationship you had</p> <p>3 with your sister, who was only two years older than you.</p> <p>4 I didn't see anything in the report that suggested that</p> <p>5 she was the predator in that situation, if one could say</p> <p>6 that there was a predator involved. So I didn't view it</p> <p>7 from that perspective; at least in terms of what I read.</p> <p>8 I do agree with the State that in a case of</p> <p>9 this nature that imposition is warranted and because of</p> <p>10 the deeply-rooted nature of what's going on here and the</p> <p>11 seriousness of the offense and the risk of relapse or</p> <p>12 re-offending or further activity and because at this point</p> <p>13 you're not a good candidate for community supervision; for</p> <p>14 all of those reasons, the court will impose a sentence of</p> <p>15 imprisonment.</p> <p>16 Frankly, I'm inclined to give the State</p> <p>17 everything they've asked for in this circumstance, but I'm</p> <p>18 not going to do that. On Count One I'll impose a sentence</p> <p>19 of ten years with four years fixed, followed by six years</p> <p>20 indeterminate. And in Count Two, a sentence of ten years</p> <p>21 indeterminate consecutive to Count One.</p> <p>22 Court will require that you comply with the</p> <p>23 Idaho Sexual Offender Registration Act. Court will impose</p> <p>24 standard fines, fees and costs, but I will not at this</p> <p>25 time impose a fine given the nature and extent of the</p> <p>CHRISTINE ANNE OLESEK</p> <p>Idaho SRL-1044</p>	<p style="text-align: right;">35</p> <p>1 anticipated incarceration. It doesn't appear that you</p> <p>2 will have the ability to do that.</p> <p>3 Court does this because I believe that you</p> <p>4 are a danger to the community. I will date the no contact</p> <p>5 order previously signed to expire at the end of the term</p> <p>6 of imprisonment, which in this case would be December 8,</p> <p>7 2035.</p> <p>8 I did allow -- it says: May have phone and</p> <p>9 written contact only with Nicole Barthel, sister. Sir,</p> <p>10 you will need to sign this no contact order just</p> <p>11 acknowledging that you received it.</p> <p>12 MR. LOSCHI: Judge, is this sentence to be</p> <p>13 concurrent with Bannock County?</p> <p>14 THE COURT: Yeah, I'll make it concurrent</p> <p>15 with the Bannock County case number CRFE 2010 - 10634;</p> <p>16 Bannock County.</p> <p>17 Mr. Loschi, I just wanted to address the</p> <p>18 database information. I log that information in my</p> <p>19 worksheets for every sentencing. In this particular case,</p> <p>20 I don't think that the percentages for risk to recidivate</p> <p>21 are exactly the same database as the matching offenders.</p> <p>22 I can tell you why I think that. I found as I write these</p> <p>23 down for each case that I see these numbers very</p> <p>24 frequently. The 68/51/71, and I think that those numbers</p> <p>25 are generally far more of a general evidence of criminal</p> <p>CHRISTINE ANNE OLESEK</p> <p>Idaho SRL-1044</p>